IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3356 OF 2007

Basavanappa Bhimsha Koli @ Jamdar,)
Age: 60 yrs., Occ: Agriculture,)
R/o.1676, Bharat Galli, Akkalkot,)
District Solapur.)...Petitioner.

Versus

Sunil Basavanappa Jidge,)
Age: 35 yrs., Occ: Agriculture,)
R/o.A-1 Chowk, Akkalkot,)
District Solapur.)...Respondent.

Shri G.S.Godbole for the Petitioner.

Shri P.M.Mengane for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : SEPTEMBER 05, 2007.

ORAL JUDGMENT:

1. Heard the learned counsel appearing for the parties. On July 04th, 2007 rule was issued in the Writ Petition and rule on interim relief was made returnable. The order dated July 04, 2007 notes that an endeavour will be made to decide the Petition finally on the date on which the Petition is fixed for consideration of interim relief. Accordingly, I have heard counsel appearing for the parties on the merits of the Writ Petition.

2. The Petitioner is the original Plaintiff who filed a suit for injunction restraining the Respondent from interfering with the possession of the Petitioner

over the property described in the paragraph No.1B of the plaint till the Petitioner is dispossessed in execution of decree passed in Regular Civil Suit No.39 of 1991. A prayer for mandatory injunction is also incorporated seeking a direction against the Respondent to restore the amenities. An Application was made by the Petitioner at Exhibit 26 for amendment of plaint. By the order impugned dated 28th November, 2006 the said Application has been rejected by the learned Civil Judge, Junior Division, Akkalkot.

3. In the plaint the Petitioner has stated that late Gurulingappa filed Regular Civil Suit No.39 of 1991 against the Petitioner for possession of the property described in paragraph 1B of the plaint and the said suit has been decreed. It is stated that an Appeal preferred by the Petitioner against the said decree is pending in the District Court. It is alleged in the plaint that the Respondent-Defendant purchased the suit property from the legal representatives of late Gurulingappa by a registered document dated 18th June, 2004. It is stated that the document dated 18th June, 2004 is in the nature of an agreement for sale which records that out of total consideration of Rs.2 lakhs, the Respondent had paid sum of Rs.1,95,000/- to the legal representatives of the deceased Gurulingappa. It is stated that the agreement contains a recital that the

Respondent has been placed in possession. The apprehension expressed in plaint is that even before the decree passed in Regular Civil Suit No.39 of 1991 is executed for dispossessing the Petitioner, the Respondent was likely to dispossess the Petitioner by taking law in his own hands. In the Application for amendment at Exhibit 26 it is stated that on 14th July, 2006 the Respondent filed an Application in the trial Court stating that the Agreement for Sale dated 18th June, 2004 has been cancelled by the document dated 24th March, 2006 and now possession of the suit property is with the legal representatives of the deceased Gurulingappa. The prayer in the Application for amendment is for impleading the legal representative of deceased Gurulingappa as the second to seventh Defendants. A paragraph is sought to be added in the plaint for stating that transaction in favour of the Respondent has been cancelled and now the proposed second to seventh Defendants in collusion with the original Defendant were trying to dispossess the Petitioner. It is stated that as a prayer for perpetual injunction has been made against the original Defendant on account of construction carried out by him infront of the suit premises, the original Defendant will have to be continued as a party Defendant No.1. The said Application for amendment was opposed by the Respondent by contending that the Respondent is no longer concerned

with the suit property.

4. The learned counsel for the Petitioner pointed out that the proposed amendment will not change the nature of the suit and after considering the the averments sought to be added by the proposed amendment, the Application ought to have been allowed. The learned counsel for the Respondent pointed out that the averments made in paragraph (c) proposed to be added by the amendment are very vague and on the basis of such vague averments without giving the particulars of the alleged obstruction by the proposed Defendants, the amendment could not have been allowed and the same has been rightly rejected by the trial Court.

5. I have considered the submissions. In the text of the proposed amendment it is stated that during the pendency of the suit, a document was executed on 24th March, 2006 by which it is claimed that the original Defendant (Respondent herein) is not having any right, title and interest in respect of the suit property and he has relinquished his right, title and interest in favour of the legal heirs of the deceased. However, it is alleged that the Respondent and the proposed Defendants were trying to dispossess the Petitioner.

6. The ground given by the learned trial Judge for

rejecting the amendment is that no particulars are given as to when proposed Defendants obstructed the alleged possession of the Petitioner. It is stated that the proposed amendment will change the nature of the suit. Even according to the Respondent-Defendant during the pendency of the suit by executing a document he had relinquished his rights in the suit property in favour of the heirs of the deceased Gurulingappa. Now it is alleged that the Respondent is no longer having any right, title and interest in the suit property and the heirs of deceased Gurulingappa are in possession of the suit property. Therefore, by amendment the Petitioner is seeking relief of perpetual injunction against the added Defendants viz. heirs of the deceased Gurulingappa.

7. Infact, the amendment ought to have been allowed to avoid multiplicity of the proceedings. Whether the Petitioner succeeds in getting a decree against the added Defendants or not is a question to be decided on merits of the suit. The learned Judge could not have considered the merits or correctness of the averments sought to be added by the proposed amendment. In my view, the amendment ought to have been allowed as it will not change the nature of the suit and it will avoid multiplicity of the proceedings.

8. Hence, I pass the following order:

(i) The impugned judgment and order dated 28th November, 2006 passed by the learned Civil Judge, Junior Division at Akkalkot below Application at Exhibit 26 in Regular Civil Suit No.39 of 2005 is quashed and set aside.

(ii) Application at Exhibit 26 made by the Petitioner is hereby allowed.

(iii) The amendment shall be carried out by the Petitioner within a period of two weeks from the date of receipt of writ of this order by the trial Court.

(iv) It will be open for the Respondent herein to file additional written statement to the amended plaint.

(v) All contentions of the parties on merits of the pending suit are expressly kept open.

(vi) Rule is made absolute in above terms with no orders as to costs.

(vii) Parties and the concerned courts to act upon an

authenticated copy of this order.

JUDGE